



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,342	01/14/2002	Sophie Helene Vayrette	05725.1013-00	6740

7590 06/16/2004

Thomas L. Irving
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
----------	--------------

3732

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,342

Applicant(s)

VAYRETTE, SOPHIE HELENE

Examiner

Anu Ramana

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-95 is/are pending in the application.
- 4a) Of the above claim(s) 7, 9, 11, 66, 68 and 90-95 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 10, 13-65, 67 and 69-89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicants' arguments with respect to claims 90-95 presented in the amendment submitted on April 28, 2004 are not persuasive. It is the Examiner's position that claims 90-95 are directed to the non-elected species II (Fig. 2), an envelope with two independent thumb portions located at opposite lateral ends of the envelope. When a species II envelope is worn on a hand, one thumb portion is always unused. In contrast, the envelope of Fig. 4 (elected species VII) has four finger portions, one for each finger of one hand, and one thumb portion so that when such an envelope is worn, all finger portions and the thumb portion are occupied. Thus, claims 90-95 are not generic and have not been rejoined for examination on the merits in this Office Action.

Claim 69 was inadvertently indicated to be withdrawn in the Office Action mailed on January 2, 2004. Accordingly, this claim has been rejoined for examination on the merits and appropriately treated in this Office Action.

The amendment submitted on April 28, 2004 has been entered. The finality of the action mailed on January 2, 2004 is withdrawn in view of the new grounds of rejection made in this Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 13-15, 18-24, 26, 34-39, 48-49, 60-65, 70-72, 75-79, 81 and 89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street (US 6,017,351) in view of Strong (US 5,636,406).

Street discloses a hand-held, permeable, cosmetic abrasive pad or envelope 100 formed as a mitt or "mitten" for exfoliating skin, made by permanently attaching first and second segments, 110 and 112 of nonwoven fibrous material along their edges, wherein

Art Unit: 3732

the surface of one segment is mildly abrasive (first roughness) and the surface of the other surface is more aggressively abrasive (second roughness) (Figure 12, col. 3, lines 31-67, col. 4, lines 1-7, col. 9, lines 37-67 and col. 10, lines 1-4). The first and second segments, 110 and 112, of the Street device are inherently made of different material.

Street does not disclose that pad 100 is shaped as either a glove or a mitten with at least one thumb portion.

Strong teaches a cosmetic pad 10 with either one or two thumb portions (Figures 2 and 3) wherein two opposed or independent thumb portions (i.e, a pad symmetric about a longitudinal axis) enable use of pad 10 on a human right or left hand (col. 2, lines 54-59).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided two thumb portions on the Street pad 100, as taught by Strong, for ambidexterity.

Regarding claims 4 and 63, the device of the combination of Street and Strong is capable of being used to apply a product to a skin surface.

Regarding claims 13-15 and 70-72, Street discloses that the envelope 100 is made from polyester fibers that are thermoplastic, polyolefin fibers.

The method steps of claims 35-39 of providing the device of the combination of Street and Strong; massaging a portion of the body to be treated with a first outer face 110 and second outer face 112; inserting a hand into the opening of the device of the combination of Street and Strong; and changing the position of the Street device with respect to the hand between massaging with the first outer face and the second outer face are performed during normal use of the device of the combination of Street and Strong.

Regarding claim 49, Street discloses that two different abrasive exterior surfaces are provided so that the user can select and use either side for scrubbing skin (col. 3, lines 53-58 and col. 9, lines 50-57).

Regarding claims 19-22 and 76-77, although Street does not disclose a specific thickness of the first and second segments, the thickness of the nonwoven fibrous material or composite used to make articles such as gloves must have an appropriate thickness to ensure properties such as breathability, flexibility and permanence.

Art Unit: 3732

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide first and second segments having thicknesses in a range 400 micrometers to about 1000 micrometers in the device of the combination of Street and Strong as a matter of obvious design choice based on the intended use of the device since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claims 1, 8, 10, 60, 67 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street in view of Seunevel (US 3,602,917).

Street does not disclose that pad 10 is configured or shaped as a glove with a thumb portion. See previous discussion of the Street reference.

Seunevel teaches a glove that may be worn on either hand of a user (Fig. 1-3 and 5, col.1, lines 6-9 and col. 2, lines 65-68).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have shaped pad 10 in the form of a glove that may be worn on either hand since it was known in the art to provide such gloves to avoid discomfort to a wearer.

Claims 16-17 and 73-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street in view of Strong and Snyder et al. (US 4,319,956).

Street does not disclose that the nonwoven material has thermoplastic and natural fibers such as cellulose fibers.

Snyder et al. teach a nonwoven material made of a blend of synthetic and natural fibers for improved wet properties such as tensile strength (col. 3, lines 3-17).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device of the combination of Street and Strong of a nonwoven material that is a blend of thermoplastic and natural fibers, as taught by Snyder et al., for improved tensile strength.

Art Unit: 3732

Claims 25, 27-29, 40-42, 45, 47, 50-52, 55-59, 80 and 82-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street in view of Strong and Ginger et al. (US 4,347,931).

Regarding claims 25 and 80, Street does not disclose that device 100 is made by heat sealing first and second layers, 110 and 112.

Regarding claims 27-29, 50-52 and 55-59, Street does not disclose that the first and second surfaces are impregnated with at least one product such as a cosmetic or a care product.

Ginger et al. teach a suitably shaped envelope formed by heat sealing first and second layers 14 and 15 wherein the first and second layers are configured to be impregnated with a product which is a cosmetic or a care product for a variety of end uses (Figure 5, col. 4, lines 3-14, lines 19-29, lines 66-68 and col. 5, lines 1-6).

Accordingly it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have attached layers 110 and 112 of the device of the combination of Street and Strong, by heat sealing as taught by Ginger et al., for the purpose of permanent attachment of layers 110 and 112.

Further, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have impregnated either or both face(s) of the device of the combination of Street and Strong with a cosmetic or care product, as taught by Ginger et al., for a variety of end uses.

Regarding claims 47 and 58, Ginger et al. teach a mitt with at least one outer surface impregnated with a desired material such as cosmetic materials in a sealed pack, prior to use. Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of the combination of Street and Strong in a sealed pack, as taught by Ginger et al., so that the surfaces are impregnated by a person other than the user.

The method steps of claims 40-42, 45 and 47 are performed during normal use of the device of the combination of Street, Strong and Ginger et al.

Claims 27-33, 40-46, 50-57, 59 and 82-88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street in view Strong and Gruenbacher et al. (US 6,508,602).

Art Unit: 3732

Street does not disclose that the first outer face is impregnated with at least one first product and the second outer face is configured to be impregnated with at least one second product differing from the first product.

Gruenbacher et al. teach an applicator such as a glove or mitt 10 made of a nonwoven material with a front outer surface 31 and a back outer surface 33 wherein the surfaces 31 and 33 are configured to be impregnated by the same or different products such as lotions, creams to a skin surface (col. 3, lines 40-42 and lines 53-67 and col. 4, lines 1-15, col. 5, lines 41-53, col. 6, lines 33-42, col. 12, lines 61-64 and col. 13, lines 5-6). Gruenbacher et al. also teach containment of the products in reservoirs 30 and 35 in the applicator 10.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the first outer face 110 of the device of the combination of Street and Strong to be impregnated with one or more products such as a skin cream or a skin cleansing product, as taught by Gruenbacher et al., for the dual purpose of cleaning and soothing.

The method steps of claims 40-46 are performed during normal use of the device of the combination of Street, Strong and Gruenbacher et al. for the purpose of scrubbing or cleaning and soothing (application of a cream or lotion).

Response to Arguments

Applicant's arguments submitted under "REMARKS" in the response filed on April 28, 2004 have been considered but are moot in view of the new ground(s) of rejection presented in this Office Action.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (703) 306-4035. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

Art Unit: 3732

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Armando Lanza*
June 11, 2004


EDUARDO C. ROBERT
PRIMARY EXAMINER